

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION**

**PATRICIA WEGNER INDIVIDUALLY,  
AND ON BEHALF OF THE ESTATE OF  
TROY WEGNER, DECEASED**

## Plaintiffs

**V.**

**TETRA PAK, INC., AND THE  
HARTFORD LIFE AND ACCIDENT  
INSURANCE COMPANY  
Defendants.**
































**C.A. No.** 4:20-cv-608

## **NOTICE OF REMOVAL**

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Pursuant to 28 U.S.C. §§ 1331, 1441, and 1446, Defendant Hartford Life and Accident Insurance Company (“Hartford”) files this Notice of Removal and respectfully shows as follows:

## Procedural Background

1. Hartford is party to an action commenced against it by Plaintiff Patricia Wegner in the 362<sup>nd</sup> District Court of Denton County, Texas, captioned as Cause No. 20-5205-362, *Patricia Wegner Individually, and on behalf of the Estate of Troy Wegner Deceased v. Tetra Pak, Inc. and the Hartford Life And Accident Insurance Company* (the “state action”). A certified copy of the state court docket sheet and true and correct copies of the pleadings and all process and orders served on Hartford in the state action are attached hereto as Exhibit “A” with an index of same.

2. Hartford was served on July 14, 2020. *See* Exhibit A-3. Co-defendant Tetra Pak, Inc. (“Tetra Pak”) was also served on July 14, 2020. Thus, this Notice of Removal is timely filed.

### **Federal Question Jurisdiction**

3. This Court has federal question jurisdiction over this litigation, because the claims alleged in the Petition, Exhibit A-2, are ones exclusively governed by the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001 *et seq.*, as amended (“ERISA”).

4. In her Petition, Plaintiff seeks additional life insurance benefits allegedly due to her under Hartford Supplemental Term Life Insurance Policy No. GL-681363 (the “Policy”) issued to Policy Holder Tetra Pak Inc., under which Plaintiff alleges that Troy Wegner was an insured, and that Plaintiff was a beneficiary. *See* Exhibit A-2: Plaintiff’s Petition. The Policy is a supplemental term life insurance policy issued by Hartford to Tetra Pak, Inc., as part of its employee benefit plan (The “Plan”). Thus, the Plan is an “employee welfare benefit plan” as that term is defined by Section 3(1) of ERISA. A true and correct copy of the Policy, Benefit Plan, and Certificate, showing that it is governed by ERISA, are attached collectively hereto as Exhibit B.

5. Because the claims in the Petition are claims to recover benefits and to enforce Plaintiff’s rights under the Plan and Policy, the relief sought is available exclusively under ERISA Section 502. *Metropolitan Life Ins. Co. v. Taylor*, 481 U.S. 58, 60-66 (1987). It is well-settled that Congress has so completely preempted the area of ERISA law that any civil complaint arising in that area, even if it pleads state law claims only, “is necessarily federal in character.” *Id.* at 63-64; *Arana v. Ochsner Health Plan*, 338 F.3d 433, 437 (5th Cir. 2003); *Boren v. N.I. Industries, Inc.*, 889 F.2d 1463, 1465 (5th Cir. 1989). Therefore, the claims plead in the Petition are completely preempted by ERISA.

6. For the reasons detailed above, the claims plead in Plaintiff’s Petition are ones over which this Court has original federal question jurisdiction pursuant to 28 U.S.C. §§ 1331. In

addition, this Court has supplemental and pendant jurisdiction over the state claims in the Petition, if any.

**Co-Defendant Consents to Removal**

7. Co-Defendant Tetra Pak has submitted its Consent to the Removal, filed contemporaneously with this Notice of Removal.

**Notice Given**

8. Hartford has given notice of this Removal to Plaintiff and to the 362<sup>nd</sup> District Court, Denton County, Texas.

WHEREFORE, Defendant Hartford Life and Accident Insurance Company prays that this action be removed to the United States District Court for the Eastern District of Texas, Sherman Division, from the 362<sup>nd</sup> District Court in Denton County, Texas.

Respectfully submitted,

**WILSON, ELSER, MOSKOWITZ,  
EDELMAN & DICKER, LLP**

By: /s/ Linda P. Wills  
Linda P. Wills  
State Bar No. 21661400  
Federal Bar No. 12566  
Ved Chitale  
State Bar No. 24099613  
Federal Bar No. 3157954  
909 Fannin, Suite 3300  
Houston, Texas 77010  
Telephone: 713-353-2000  
Facsimile 713-785-7780  
[Linda.Wills@wilsonelser.com](mailto:Linda.Wills@wilsonelser.com)  
[ved.chitale@wilsonelser.com](mailto:ved.chitale@wilsonelser.com)

**ATTORNEYS-IN-CHARGE FOR DEFENDANT  
HARTFORD LIFE AND ACCIDENT  
INSURANCE COMPANY**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing instrument was delivered to all counsel of record in accordance with the Federal Rules of Civil Procedure on this the 7<sup>th</sup> day of August, 2020.

**Via e-service**

Anthony L. Vitullo  
Garret J. McLearen  
Fee, Smith, Sharp, & Vitullo, L.L.P.  
13155 Noel Road, Suite 1000  
Dallas, Texas 75240  
lvitullo@feesmith.com  
[gmclearn@feesmith.com](mailto:gmclearn@feesmith.com)  
972-980-3257  
972-934-9200 [fax]

John L. Malesovas  
Malesovas Law Firm  
5301 Southwest Parkway, Suite 460  
Dallas, Tx 78735  
Telephone: 512-708-1777  
Facsimile: 512-708-1779  
[john@malesovas.com](mailto:john@malesovas.com)

**ATTORNEYS FOR PLAINTIFF**

/s/ Linda P. Wills

Linda P. Wills